

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1032X

NEBRASKA, KANSAS & COLORADO RAILWAY, L.L.C.—ABANDONMENT
EXEMPTION—IN DECATUR, NORTON, AND PHILLIPS COUNTIES, KAN., AND
HARLAN COUNTY, NEB.

Decided: November 17, 2016

Nebraska, Kansas & Colorado Railway, L.L.C. (NKCR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 57.31 miles of rail line between (1) milepost 3.35 near Orleans, Neb., and milepost 29.84 at Alma, Kan.; (2) milepost 47.23 at Reager, Kan., and milepost 78.05 at Oberlin, Kan.; and (3) the Norton Spur in Norton, Kan. NKCR also sought authority to discontinue overhead trackage rights over a 17.7-mile line of railroad owned by Kyle Railroad between milepost 29.6 at Alma and milepost 47.3 at Oronoque Junction, Kan. Notice of the exemption was served and published in the Federal Register on August 7, 2015 (80 Fed. Reg. 47,557). The exemption became effective on September 8, 2015.

By decision served on September 4, 2015, the Board imposed four environmental conditions recommended by the Board's Office of Environmental Analysis. By decision and notice of interim trail use or abandonment (NITU) served on October 22, 2015, a 180-day period was authorized for Sunflower Rails-to-Trails Conservancy, Inc. (Sunflower) to negotiate an interim trail use/rail banking agreement with NKCR for acquisition of the 57.31-mile line under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.¹ By decision served on April 14, 2016, the negotiating period under the NITU was extended until October 16, 2016.

By letter filed on September 7, 2016, the Phillips County, Kan., Board of County Commissioners (PBCC) argues that the NITU was issued based upon incorrect information about Sunflower. PBCC states that Sunflower has taken the position that it is exempt from taxation on the right-of-way that runs across Phillips County and argues that Sunflower's position is contrary to law. PBCC requests that the Board specify who retains the long-term liability for real property taxation for the NKCR line for which railbanking has been requested. On September 14, 2016, Sunflower submitted a letter in response to PBCC.

By letter filed on September 16, 2016, Sunflower requests a 180-day extension to negotiate interim trail use with NKCR. In a response filed on October 3, 2016, NKCR states that it objects to the requested extension.

¹ In the same decision, the Board imposed a new condition in addition to the four previously imposed environmental conditions regarding salvage activities. These conditions remain in effect.

The Board's authority to impose trail use conditions is limited because the Board's role under the Trails Act is largely ministerial, see Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144, 1151-52 (D.C. Cir. 2001), and the interim trail use program is voluntary and consensual between the railroad and the trail sponsor, see Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986). Therefore, because NKCR does not agree to an extension to negotiate for interim trail use, an extension will not be issued. Because the NITU has expired and will not be extended, the questions PBCC raises regarding Sunflower's potential liability for taxation of the right-of-way are moot. If NKCR chooses to abandon the 57.31-mile line, it must file a notice of consummation as set forth under the Board's rules at 49 C.F.R. § 1152.29(e)(2) by December 15, 2016.

It is ordered:

1. Sunflower's request to extend the NITU negotiating period is denied.
2. NKCR may fully abandon the 57.31-mile line.
3. Pursuant to 49 C.F.R. § 1152.29(e)(2), NKCR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NKCR's filing of a notice of consummation by December 15, 2016, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.
4. This decision and notice is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.